STANDING FOR CHANGE: ASSOCIATIONAL STANDING AS AN AGGREGATIONAL MECHANISM IN TENANTS' RIGHTS

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I. INTRODUCTION

One-third of the United States population is made up of renters,[1] all of whom share a significant, personal interest in safe and quality housing. Across varying income levels, knowledge bases, and negotiating abilities, all tenants are inherently vulnerable.[2] Renters rely on the representations landlords make to them about their homes. Their health, personal property, and peace are subject to landlords' honesty, tact, and respect in fulfilling both contractual and statutorily imposed duties. Despite well-established substantive rights to safe housing,[3] tenants struggle to realize the promises of leases and housing codes.[4] In recent years, tenants across the country have faced "a deterioration in their landlord relationships, an increase in landlords deferring maintenance, an increase in illegal evictions or lockouts, and an increase in fair-housing [issues]."[5]

While landlord-tenant law, tenants' rights, housing codes, enforcement, and the economics of the landlord-tenant relationship vary greatly across states and municipalities,[6] tenants can better vindicate their rights with the ability to bring multiple units' claims against one landlord.[7] In response to the disparity between tenants' substantive rights and adequate housing, considered the "enforcement gap" in tenants' rights,[8] this Note proposes

[1] Charlotte Alter, *Renters Are in Revolt. This Tenant Union Plans to Get Them Organized*, TIME (Oct. 26, 2013), https://time.com/6325516/kc-tenants-union-time-documentary [https://perma.cc/T6MJ-F9YW].

[2] Eric Sirota, *The Rental Crisis Will Note Be Televised: The Case for Protecting Tenants Under Consumer Protection Regimes*, 54 U. MICH. J. L. REFORM 667, 670 (2021).

[3] Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 98, 99-100, 111-116 (2019) (discussing tenants' well-established rights and remedies, including public enforcement of housing codes and private rights of action available in tort, contract, or statutory claims).

[4] *Id.* at 98-100 (describing the disparity between substantive rights and prevalence of substandard housing as the "enforcement gap" in tenants' rights); *see also* Kelly Hogue & Heather K. Way, *The Role of the Law in Protecting Tenant Organizing: Opportunities for Local and State Legal Reforms*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 391, 400-01 (2023).

[5] Hogue & Way, *supra* note 4, at 400-01.

[6] FREDDIE MAC, A NATIONAL SURVEY OF TENANT PROTECTIONS UNDER STATE LANDLORD TENANT ACTS 2 (Jan. 2023). Some regions, like New York City, have robust tenant protection laws and systems for enforcement, including a right to counsel for tenants facing eviction and a statutory right of action to enforce the housing code that enables tenants to institute group actions. NADA HUSSEIN & SARAH GALLAGHER, NAT'L LOW INCOME HOUS. COAL., THE STATE OF STATEWIDE TENANT PROTECTIONS 3 (2023); N.Y.C. ADMIN. CODE § 27-2115(h)(1), (i) (2023). However, such clear statutory provisions can be imperfect (*see infra* notes 243, 246 and accompanying text) and many regions lack laws and policies that safeguard tenants' access to safe, quality housing (NADA HUSSEIN & SARAH GALLAGHER, *supra*, at 1-2).

[7] Sabbeth, *supra* note 3, at 144. *See infra* Part III.

[8] Sabbeth, *supra* note 3, at 101.

using tenant associations[9] as a vehicle for effective, aggregate lawsuits to vindicate tenants' rights. Primarily, it proposes that, across jurisdictions, associational standing doctrine can allow tenants to aggregate claims that would not be otherwise suited for joinder or class actions.[10] It also recommends specific legislative provisions that would remove procedural and remedial barriers to redress for tenant associations and would enable such associations to pursue a wider variety of claims.[11] Finally, as tenant associations also offer benefits beyond rights-based reform,[12] it emphasizes that such associations should be viewed as catalysts for community organizing and can provide extralegal solutions to tenants' collective needs.[13]

Part II of this Note provides background on the current status of tenants' rights and the barriers tenants face in enforcing their rights.[14] It also discusses considerations for effective solutions.[15] Part III explores opportunities for aggregation of tenants' claims and discusses how associational standing can aid tenant protection.[16] Part IV analyzes the barriers and limitations of aggregation via associational actions.[17] It briefly explains the requirement of capacity to sue before delving into a discussion of associational standing doctrine.[18] Part V.A recommends utilizing associational standing across all jurisdictions for claims regarding tenants' shared interests.[19] Part V.B and V.C, respectively, propose specific legislation to enable associational standing for more individualized claims and discuss procedural mechanisms that allow tenants to aggregate claims that are too personal to include via broad legislation.[20] Part V.D reviews considerations for implementation.[21] Part VI concludes with a brief summary.[22]

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[9] Tenant associations are entities organized by tenants in a building through which tenants can engage with their landlords, neighborhoods, and other stakeholders collectively. Shekar Krishnan, *Advocacy for Tenant and Community Empowerment: Reflections on My First Year in Practice*, 14 CUNY L. REV. 215, 222, 237 (2010).

[10] *See infra* Part V.

[11] *See infra* Parts V.B, V.C.

[12] *See, e.g.*, Krishnan, *supra* note 9, at 237; Raymond H. Brescia, *Line in the Sand: Progressive Lawyering, "Master Communities," and a Battle for Affordable Housing in New York City*, 73 ALB. L. REV. 715, 755-56 (2010).

[13] *See* discussion *infra* Part V.D.

[14] *See infra* Part II.

[15] *See infra* Part II.

[16] *See infra* Part III.

[17] *See infra* Part IV.

[18] *See infra* Part IV.

[19] *See infra* Part V.A.

[20] *See infra* Parts V.B, V.C.

[21] *See infra* Part V.D.

[22] *See infra* Part VI.

II. BACKGROUND: TENANTS' UNVINDICATED RIGHTS

Though laws establishing tenants' substantive rights are "multiple and overlapping,"[23] millions of renters across the country live in inadequate housing, and tenants continue to face discrimination, harassment, and retaliation from landlords.[24] Tenants, particularly poor[25] tenants, are not benefitting from such protections due to a combination of financial, structural, and cultural barriers.[26]

A. The Current Status of Tenants' Rights

The ongoing[27] struggle for tenants' rights exists amid a history of unjust, predatory, and discriminatory housing practices perpetuated by a legal system and political economy that favor wealthy white landowners.[28] The tenants' rights revolution of the 1960s and 1970s, which progressed through both case law and legislative reforms, accomplished a new legal regime of tenant protections.[29] Today, tenants enjoy significant substantive rights.[30]

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[23] Sabbeth, *supra* note 3, at 99-100, 111-116 (discussing rights to safe housing and federal fair housing protections).

[24] THYRIA ALVAREZ & BARRY L. STEFFEN, OFF. OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., WORST CASE HOUSING NEEDS 1 (2023) (relying on data from the 2019 American Housing Survey); HUSSEIN & GALLAGHER, *supra* note 6, at 3; Sirota, *supra* note 2, at 667, 671.

[25] Following the lead of "poor people's social movements," as done by Kathryn Sabbeth, this Note uses "poor," along with "no- and low- income," to refer to people who cannot afford to buy necessities or financially handle emergencies, and their financial situations make them a target for discrimination and make it harder for them to combat inconvenience and injustice. *See* Sabbeth, *supra* note 3, at 101 n.24 (2019); Myriam Gilles, *Class Warfare: The Disappearance of Low-Income Litigants from the Civil Docket*, 65 EMORY L.J. 1531, 1538-40 (2016). Though even middle-income Americans struggle retain counsel in the face of legal issues (*see infra* note 141), poor people face recurring exploitation and injustice precisely due to their financial status. *See* Gilles, *supra*, at 1538-40; Sabbeth, *supra* note 3, at 101 ("[P]oor people are the most likely to get stuck in dangerous housing, and enforcement is undermined precisely because of their social position."). It is important to emphasize that class oppression invariably intersects with racial and other forms of oppression, which the struggle for safe, quality housing reflects. Kathryne M. Young & Katie R. Billings, *An Intersectional Examination of U.S. Civil Justice Problems*, 2023 UTAH L. REV. 487, 497, 520-22 (2023); Sabbeth, *supra* note 3, at 103, 107-08.

[26] *See* discussion *infra* Part II.B.

[27] Alter, *supra* note 1 (discussing record eviction rates in 2023 and contemporary movements to form tenant unions).

[28] RICHARD H. CHUSED, LANDLORD AND TENANT LAW: PAST, PRESENT, AND FUTURE 258, 267-70 (Susan Bright ed. 2006) (describing how landlord-tenant courts evicted large swaths of tenants without sympathy for their plight in the early twentieth century; "By the time of the urban riots in the mid-to-late 1960s, landlord-tenant courts became one of many sources of racial discontent and tension, . . . dominated by bias in favor of landlords."); John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis* 46 FORDHAM URB. L. J. 1081, 1091-92 (2019) (describing New York City's current affordable housing crisis); David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 400-04 (2011) (recounting the goals of the tenants' right revolution).

[29] Super, *supra* note 28, at 391, 398-99; Sirota, *supra* note 2, at 678-79.

[30] Sabbeth, *supra* note 3, at 100, 111-116.

Robust housing codes, the warranty of habitability, tort doctrines, and antidiscrimination laws guarantee the right to adequate housing and to be free from certain types of discrimination.[31] Some states and municipalities guarantee even stronger protections, such as the right to counsel when facing eviction, comprehensive anti-discrimination and anti-retaliation laws, and rent-gouging prohibitions.[32]

Despite these well-settled enforceable rights, tenants face crises in securing affordable, safe, and quality housing, free from landlord retaliation and discrimination.[33] In its most recent report on 2021 data, the U.S. Department of Housing and Urban Development ("HUD") reported that 8.53 million renter households experienced "worst case housing needs," meaning renters with "very low incomes, lack[ed] housing assistance, and [had] either severe rent burdens or severely inadequate housing (or both)."[34] While only 5.6 percent of these households were found to have severely inadequate housing,[35] 3.06 million occupied rental units were at least moderately inadequate due to: (1) frequent toilet plumbing issues; (2) "having unvented gas, oil, or kerosene heaters as the main source of heat"; (3) at least three upkeep problems related to leaks, holes, peeling paint or plaster, or rats; or (4) "lacking [an exclusive] sink, range, or refrigerator."[36] Such conditions present a litany of health hazards, the effects of which are further compounded by no- and low-income households' limited access to

[31] *Id.* at 99-100, 111-116 (reviewing tenant's rights to safe housing and to be free of certain types of discrimination under the Fair Housing Act). Forty-nine states and the District of Colombia have adopted the implied warranty of habitability, which gives tenants a private right of action against a landlord for maintaining uninhabitable conditions. *Id.* at 112 n.138, 113 ("The most basic source of modern law for tenants' private right of action is the implied warranty of habitability."); Jana Ault Phillips & Carol J. Miller, *The Implied Warranty of Habitability: Is Rent Escrow the Solution or the Obstacle to Tenant's Enforcement?*, 25 CARDOZO J. EQUAL RTS. & SOC. JUST. 1, 9, 19 (2018) ("In statutory or common law states, the landlord's breach of the implied warranty of habitability gives rise to various remedies for the tenant."); Super, *supra* note 28, at 405 ("Once the courts or legislature imply a warranty of habitability into residential leases, tenants in bad housing may sue their landlords for damages.").

[32] Hogue & Way, *supra* note 4, at 407-08 (discussing landlord retaliation laws); HUSSEIN & GALLAGHER, *supra* note 6 (discussing right to counsel, discrimination on source of income, eviction expungement, anti-rent gouging, and "just cause" eviction legislation).

[33] Sabbeth, *supra* note 3, at 98-100; Sirota, *supra* note 2, at 670-71.

[34] ALVAREZ & STEFFEN, *supra* note 24, at 1-2 (relying on data from the 2021 American Housing Survey).

[35] *Id.* at 3 (defining "severely inadequate housing" as "units having one or more serious physical problems related to heating, plumbing, and electrical systems or maintenance").

[36] *Id.* at 37, 81-82.

healthcare.[37] Some more abusive landlords[38] may even maintain regimes of disrepair throughout an entire building.[39] For example, in New York City, an estimated twenty percent of renters live in buildings with landlords who display a gross disregard for the health and safety of their tenants.[40]

Beyond housing inadequacy, tenants face other illegal abuses from landlords who try to maximize rental profits.[41] Some landlords pursue retaliatory or pretextual evictions, withhold security deposits, discriminate against tenants, or threaten to report tenants to immigration enforcement.[42] Most vulnerable to these abuses are rent-burdened tenants,[43] who numbered 22.4 million in 2022[44] and became the typical American renter in 2023.[45] One financial setback away from losing their homes,[46] rent-burdened tenants lack the resources to adequately enforce their legal rights, combat landlord malfeasance, and remediate housing code violations.[47]

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[37] Super, *supra* note 28, at 451-52; JOINT CTR. FOR HOUS. STUD., HARVARD UNIV., AMERICA'S RENTAL HOUSING 21 (2022) https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf [https://perma.cc/YS3V-QPTW].

[38] In this Note, "landlord" is used to refer to both individual owners and management companies, as both perpetuate these abuses. *See* Sirota, *supra* note 2, at 722 ("[T]here is some data suggesting that corporate landlords are more abusive than individual landlords, at least in some respects."); Jarrett Murphy, *Report: 'Bad Landlords' Are Few in Number but Destructive in Impact*, CITY LIMITS (Oct. 24, 2018), https://citylimits.org/2018/10/24/report-bad-landlords-are-few-in-number-but-destructive-in-impact [https://perma.cc/JL37-3PZ7].

[39] Murphy, *supra* note 38; Krishnan, *supra* note 9, at 236 ("[T]he most ruthless of landlords resort to unlawful evictions and other deplorable measures as a way to force out poor tenants. Building services are shut down and repairs neglected in the hopes that low-income tenants will find the conditions unbearable and move out."). Abusive landlords are not necessarily wealthy, as "financially constrained apartment buildings tend to have lower levels of maintenance investment." LEE SELTZER, FED. RSRV. BANK OF N.Y., FINANCING CONSTRAINTS AND MAINTENANCE INVESTMENTS: EVIDENCE FROM APARTMENTS 23 (2023).

[40] Murphy, *supra* note 38 ("[Three hundred and thirty-nine] children under five were exposed to lead due to bad landlords, leading to health problems such as brain damage."); Krishnan, *supra* note 9, at 239-40 (detailing a case where a landlord refused to fix at least seventy-five housing code violations, sixty of which were hazardous).

[41] Sirota, *supra* note 2, at 671.

[42] *Id.* at 670-71; Sabbeth, *supra* note 3, at 99; Murphy, *supra* note 38.

[43] "Rent burden" or "cost burden" is defined as spending thirty percent or more of income on rent or housing, respectively. Alter, *supra* note 1; JOINT CTR. FOR HOUS. STUD., HARVARD UNIV., AMERICA'S RENTAL HOUSING 34 (2024) [hereinafter JCHS 2024 REPORT]; Sirota, *supra* note 2, at 670.

[44] JCHS 2024 REPORT, *supra* note 43, at 34.

[45] Anna Kodé, *The Typical American Renter Is Now Rent-Burdened, a Report Says*, N.Y. TIMES (Jan. 25, 2023), https://www.nytimes.com/2023/01/25/realestate/rent-burdened-american-households.html.

[46] Sophie Kasakove, *The Tenants' Rights Movement Is Expanding Beyond Big Cities*, NEW REPUBLIC (May 17, 2019), https://newrepublic.com/article/153929/tenants-rights-movement-expanding-beyond-big-cities [https://perma.cc/Y73C-BK4W]; Sabbeth, *supra* note 3, at 101 n.24.

[47] Sabbeth, *supra* note 3, at 101; Sirota, *supra* note 2, at 670-71.

B. Barriers to Enforcement

Currently, the private bar, legal services, and public enforcement are inadequate to support tenants' rights.[48] The private bar cannot sufficiently accommodate tenants with safe housing claims.[49] Without the means to hire a lawyer[50] and with fee-shifting becoming less available,[51] tenants must rely on contingency fees to secure representation.[52] Private attorneys can therefore only represent tenants whose cases promise significant pecuniary recovery, which typically involve severe personal injuries with clear-cut causation.[53] Crucially, low-value claims are not necessarily low-impact claims.[54] The legal system largely undervalues housing code claims because the potential monetary relief is "proportional to class status" and reflective of race, class, and gender biases.[55] Courts are conservative in calculating rent abatement, a model that inherently reflects property values, because they assume tenants derived some benefit from the housing arrangement no matter how severe the violation.[56] The law further reflects biases about race, gender, and social position in damages calculations for lost wages, costs incurred, emotional distress, and even reduction in life.[57] Thus, unless tenants have claims of sufficient interest, they must rely on non-profit or public avenues to resolve their housing issues.[58]

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48 Sabbeth, *supra* note 3, at 101.

49 *Id.* at 120.

50 "[T]enants in substandard housing generally cannot purchase representation to enforce the laws that prohibit it, individuals who could afford to hire lawyers typically avoid such conditions." *Id.* In fact, many middle-income Americans cannot afford to retain counsel at market rates. Suzanne Blake, *Middle-Class Americans Can't Afford to Lawyer Up*, NEWSWEEK (Jan. 24, 2024), https://www.newsweek.com/middle-class-afford-lawyer-fees-legal-help-1863747 [https://perma.cc/FYF8-9P75] ("[A]verage lawyer hourly rates run from $211 to $425 . . . . This puts legal help far out of reach for the average American.").

51 Fee-shifting, which allows plaintiffs who win cases to also recover attorney's fees, has been undercut by courts reluctant to award reasonable fees and jurisprudence cabining potential recovery. Sabbeth, *supra* note 3, at 120-21, 127-28.

52 Contingency fees, which are attorney's fees taken retroactively from plaintiff's winnings, "do not provide a solution to the common underenforcement of tenants' rights," as large personal injury damages are rare in such cases. *Id.* at 120-21.

53 *Id.* at 120-21 n. 205 (discussing how contingency arrangements "turn on monetary damages").

54 *Id.* at 121 ("Although people living in substandard conditions experience significant harm, the legal system fails to translate that harm into monetary relief.").

55 *Id.* at 121-25 (discussing rent abatement, tort damages, and non-economic damages).

56 *Id.* at 122.

57 *Id.* at 121-25 ("For years, defense attorneys have presented evidence limiting earnings predictions based on the victims' race or gender. These calculations incorporate assumptions that, for instance, African Americans' lives are shorter than white[] [peoples'], women work fewer years than men, or disadvantaged groups receive reduced wages due to discrimination.").

58 *Id.* at 119-20, 128-129, 141.

Tenants also encounter enforcement barriers with under-resourced direct legal services organizations and public inspection agencies.[59] Free legal services programs are severely underfunded and often devote most of their resources to eviction defense or affirmative litigation that they deem more urgent than housing code enforcement.[60] Public housing code enforcement through government agencies is similarly limited in capacity and funding.[61] Governmental resource constraints "often force cities to prioritize some of the aims of [housing] code enforcement over others," such as choosing between prioritizing neighborhood quality and urgent safety hazards.[62] Ultimately, in the face of millions of units that do not meet housing code requirements,[63] even well-funded and well-resourced agencies that prioritize tenant safety may be unable to bring all substandard units into compliance.[64] As a result, less urgent, but still potentially hazardous and burdensome, violations will slip through the cracks.[65]

Government agencies are further limited in their ability to handle certain types of claims, seek adequate remedies, or represent community interests.[66] Some violations are not suited for enforcement because the violation is temporal, such as improper lead abatement, which may be

[59] *Cf. id.* at 130, 141.

[60] *Id.* at 141; Sirota, *supra* note 2, at 704; Super, *supra* note 28, at 406. Additionally, tenants raising their rights in defense to an eviction proceeding "limits the capacity of the advocacy," as the tenant is therefore in a vulnerable position, may lose future housing opportunities, and does not control key strategic decisions about the litigation. Sabbeth, *supra* note 3, at 143.

[61] Sabbeth, *supra* note 3, at 130; Scott Ferron, *Suing for the City: Expanding Public Interest Group Enforcement of Municipal Ordinances*, 50 COLUM. HUM. RTS. L. REV. 220, 222-23 (2019); Marilyn L. Uzdavines, *Barking Dogs: Code Enforcement is All Bark and No Bite (Unless the Inspectors Have Assault Rifles)*, 54 WASHBURN L.J. 161, 168-171 (2014). Notably, budgets and resources are subject to changing policies and personnel that mirror the value-judgments of the executive, legislature, and electorate towards low-income tenants. Ultimately, many governments place tenant protection at the bottom of their priority lists as a result of tenants' political and financial capital. Sabbeth, *supra* note 3, at 130-31 (quoting Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1730 (2006)) ("Underenforcement is 'a form of social disinvestment' that results from a lack of political power combined with judgments about 'how much disorder, decay, and underenforcement poor communities should be required to tolerate.'"); Sirota, *supra* note 2, at 686-87 ("[A]s of July 2019, twenty-six states had never brought an enforcement action to protect tenants.").

[62] SOPHIE HOUSE, N.Y. UNIV. FURMAN CTR., CRACKING CODE ENFORCEMENT: HOW CITIES APPROACH HOUSING STANDARDS 2, 7 (2021) (discussing the dimensions of code enforcement: (1) prioritizing neighborhood quality or tenant safety, (2) enforcing the code proactivity or reactively, and (3) opting for cooperative or punitive approaches).

[63] ALVAREZ & STEFFEN, *supra* note 24, at vii, 37, 81-82.

[64] *Cf.* HOUSE, *supra* note 62, at 2, 5 (discussing how cities balance resource constraints and enforcement priorities).

[65] *Cf. id.*

[66] Sabbeth, *supra* note 3, at 131-34.

covered up before an inspector can observe and document the violation.[67] Additionally, government lawyers and inspectors are not authorized to pursue monetary damages for tenants' legal injuries because they are only statutorily authorized to seek injunctions or civil penalties.[68] Further, administrative agencies do not represent the interests of individual tenants; instead, they are charged with representing governmental or greater societal interests.[69] Pursuant to a municipality's priorities, "[a]n agency might pursue a vacancy order and demolition of a property," rather than a solution that honors tenants' interests by keeping them in their homes.[70]

Beyond these structural barriers, the complexity, intimidation, and injustice of the legal system manifest as "cultural and cognitive barriers" that further hinder tenants' access to justice.[71] To enforce their rights, tenants must first be aware of their rights and believe in the benefits of asserting them.[72] In a study where poor public housing tenants were presented with a potential legal issue,[73] many insisted they would first opt for self-help, in part due to their distrust in the legal system and public institutions.[74] Even if tenants want to assert their substantive rights and appear pro se, they must overcome the technical hurdles of filing suit[75] and the gross power imbalance that exists between themselves and their landlords.[76] In many cities, once

[67] For example, this author's landlord allowed improper lead abatement to continue in a common area, which exposed a six-month-old baby to lead dust. Inspectors only arrived after the abatement ceased and the superintendent's wife was ordered to thoroughly clean the floors to remove evidence of lead dust.

[68] Sabbeth, *supra* note 3, at 133-34.

[69] *Id.* at 131-32.

[70] *Id.* at 132.

[71] Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1270, 1317 (2016) ("Indeed, we can think about two different definitions of access [to justice]: (1) structural barriers to access . . . and (2) cultural and cognitive barriers to access—focusing on barriers to access stemming from life experiences that result in help not being sought in the first place.").

[72] Young & Billings, *supra* note 25, at 493, 495 ("[I]f a person does not see a problem as legal, they are unlikely to take it to a lawyer or a court."); Super, *supra* note 28, at 406-07 ("[A]wareness of the warranty [of habitability] depends heavily upon tenants learning about it through word-of-mouth . . . [which] depends on how useful the warranty has seemed to [the tenant who told them about it]."); Greene, *supra* note 71, at 1313-14 ("[T]hose who were positively included toward utilizing Legal Aid had either had a positive experience with legal services themselves, or had family members or friends who had related positive experiences.").

[73] Greene, *supra* note 71, at 1275 n.68, 1283 (emphasizing that study respondents identified the issue as a potential legal problem; noting that the sample tenants made less than eighty percent of the region's median income). Notably, race and class are "two factors most reliably correlated with a person's chances of experiencing justiciable civil problems." Young & Billings, *supra* note 25, at 497.

[74] Greene, *supra* note 71, at 1310-12, 1316 (documenting that poor people conflate the criminal and civil legal systems and perceive "mak[ing] contact with the law" as risky).

[75] Super, *supra* note 28, at 407.

[76] Krishnan, *supra* note 9, at 223 ("[A settlement] negotiation between a landlord and a pro se tenant . . . is no negotiation at all."); Whitlow, *supra* note 28, at 1092 ("[Ninety percent] of landlords have historically been represented by counsel, as compared to [five to ten percent] of tenants. The imbalance

tenants make it to Housing Court, they find it vastly overburdened or under-resourced.[77] For example, New York City Housing Court manages hundreds of cases a day.[78] In Brooklyn, all but one courtroom is allocated to eviction proceedings, and actions compelling repairs for violations can last months and years, constituting illegal undue delay.[79]

Ultimately, many forms of legal help are infeasible for individual tenants with low-value claims who cannot afford a lawyer.[80]

C. Considerations for Effective Solutions

Scholarship on access to justice and the under-enforcement of tenants' rights explores and critiques the many approaches advocates take "to serve the ongoing needs of marginalized clients while also pursuing longer-term tactics like law reform, impact litigation, or community organizing."[81] Some scholars advocate for robust agency enforcement and public solutions,[82] while others question whether enforcement is socially desirable.[83] Private counsel may be better suited than government actors to advocate for tenants' interests,[84] but many scholars observe that "a narrow focus on legal rights . . . tends to individualize . . . inequality and stratification, and in the process legitimizes the status quo by failing to contend with how power is distributed in society."[85] An individualized approach to protecting tenants is inherently limited; not only are tenants' individual cases often ill-suited for many access-to-justice solutions,[86] but such a focus also risks deprioritizing pervasive, widespread issues.[87] A full analysis of access-to-justice scholarship is outside the scope of this Note, but a common thread is worth underscoring: progressive lawyering for meaningful change must be dynamic and interdisciplinary; it must be responsive and accountable to the

in legal representation between landlords and tenants plays out in an overtly racist, classist, and sexist manner.").

77 Super, *supra* note 28, at 434; Whitlow, *supra* note 28, at 1091.

78 Whitlow, *supra* note 28, at 1091 n.38.

79 Krishnan, *supra* note 9, at 227.

80 *See generally* Sabbeth, *supra* note 3.

81 Brescia, *supra* note 12, at 726; Greene, *supra* note 71, at 1269-70, 1317-18; Young & Billings, *supra* note 25, at 538-41; Krishnan, *supra* note 9, at 218-19; Super, *supra* note 28, at 398-404; Sabbeth, *supra* note 3, at 145.

82 *See* Sirota, *supra* note 2; Super, *supra* note 28, at 462; Sabbeth, *supra* note 3, at 140.

83 Sabbeth, *supra* note 3, at 117 (rejecting these arguments).

84 *Id.* at 142.

85 Whitlow, *supra* note 28, at 1119. *See also* Krishnan, *supra* note 9, at 218.

86 *See supra* Part II.B.

87 Whitlow, *supra* note 28, at 1119.

communities it serves.[88] Though the following discussion proposes a solution through rights-based litigation, it also seeks to center these guiding principles and create avenues for community mobilization.

III. THE CURRENT SCHEME OF AGGREGATION: WHY ASSOCIATIONAL STANDING?

Claim aggregation is an avenue through which tenants could better enforce their substantive rights.[89] Group actions can both overcome the barriers to justice and pursue solutions suited to a community's needs.[90] Associational standing, made possible by the proximity of tenancy, offers a viable doctrinal solution to the procedural hurdles of traditional claim aggregation.[91]

A. Opportunities in Claim Aggregation

Allowing tenants to aggregate their claims would overcome many of the difficulties that single tenants face.[92] Aggregation is the process of combining parties or claims in a civil suit, and it is enabled by procedural rules.[93] Claim aggregation, through procedural mechanisms like class actions,[94] is one of the primary ways that low-income litigants can afford litigation and redress numerous low-value claims.[95] Scholars, advocates, and litigants laud the benefits of claim aggregation for vulnerable groups, emphasizing that "[f]or low-income groups in particular, aggregating claims has provided significant access to justice."[96]

In her article *(Under)Enforcement of Poor Tenants' Rights*, Kathryn Sabbeth identifies claim aggregation as a market-based solution for closing

88 Brescia, *supra* note 12, at 727, 751 ("[P]rogressive lawyers hoping to use legal advocacy to promote progressive social change [aim] to develop a more politically integrated, tactically versatile model of legal practice." (internal quotations omitted)); Krishnan, *supra* note 9, at 219.

89 *See* discussion *infra* Part III.A.

90 *See* discussion *infra* Part III.C.

91 *See* discussion *infra* Part III.B, Part IV.

92 Sabbeth, *supra* note 3, at 144; Christopher J. Roche, *A Litigation Association Model to Aggregate Mass Tort Claims for Adjudication*, 91 VA. L. REV. 1463, 1463, 1485 (2005); Kelsey McCowan Heilman, *The Rights of Others: Protection and Advocacy Organizations' Associational Standing to Sue*, 157 U. PA. L. REV. 237, 252, 271 (2008); Gilles, *supra* note 25, at 1535.

93 Scott Dodson, *Personal Jurisdiction and Aggregation*, 133 NW. U. L. REV. 1, 8 (2018).

94 Examples of procedural rules that allow parties to aggregate claims include civil procedure rules for joinder and class action. FED. R. CIV. P. 23; FED. R. CIV. P. 20.

95 Gilles, *supra* note 25, at 1531-32, 1535; Dodson, *supra* note 93, at 8.

96 Gilles, *supra* note 25, at 1535; Dodson, *supra* note 93, at 8; Alexandra D. Lahav, *The Political Justification for Group Litigation*, 81 FORDHAM L. REV. 3193, 3199-3200 (2013); REBEKAH DILLER & EMILY SAVNER, BRENNAN CTR. FOR JUST., N.Y. UNIV. SCH. OF L., A CALL TO END FEDERAL RESTRICTIONS ON LEGAL AID FOR THE POOR 9 (2009).

the enforcement gap.[97] Aggregation is a valuable mechanism through which tenants can build cases and attract counsel.[98] Additionally, successful cases can achieve relief for entire buildings and communities.[99] Claim aggregation also fundamentally alters the power imbalance between a tenant and their landlord, forcing landlords to uphold their duty to tenants where ethics and conscience fail them.[100] Further, aggregated claims would also be more efficient for all stakeholders in adjudication and supplement agency enforcement.[101]

B. The Current Scheme of Claim Aggregation in the U.S.

United States federal and state civil procedure generally precludes multiple plaintiffs from aggregating claims that arise from different incidents and different questions of fact or law.[102] Aggregate proceedings include both aggregate lawsuits and administrative aggregations.[103] Aggregate lawsuits are achieved through mechanisms such as joinder and representative actions.[104] Administrative aggregations occur when judges follow certain procedures to more efficiently process related but separate lawsuits.[105] However, the most common avenues for aggregation—joinder, multi-district litigation ("MDL"), and class actions—are not appropriate for tenants with low-value claims that are legally disparate.[106]

Multi-district actions are the least helpful for these purposes.[107] MDLs are administrative aggregations where judges consolidate cases that have related questions of fact or law to adjudicate them more efficiently.[108] These types of aggregations keep cases separate, requiring tenants to obtain individual counsel to file each suit independently.[109] This is a cumbersome, expensive, and difficult path to enabling a court to consider related claims.

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97 Sabbeth, *supra* note 3, at 144.

98 *Id.*

99 Gilles, *supra* note 25, at 1552-53; Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858, 863 (N.Y. Civ. Ct. 2021).

100 Sabbeth, *supra* note 3, at 136-37; Krishnan, *supra* note 9, at 239-42.

101 Dodson, *supra* note 93, at 8. *See* discussion *infra* Part III.C.

102 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010).

103 *Id.*

104 *Id.*

105 *Id.* § 1.02 ("Examples [of administrative aggregations] are intradistrict consolidations, multidistrict consolidations, and bellwether trials.").

106 Curtis A. Bradley & Ernest A. Young, *Unpacking Third-Party Standing*, 131 YALE L.J. 1, 70-73 (2021); PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010).

107 *See generally* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(2) (AM. L. INST. 2010) (discussing the dynamics of MDLs).

108 *Id.*

109 *See generally id.*

Joinder is the most common way that one litigant brings another party into a lawsuit.[110] The resolution of joined lawsuits only binds the parties involved.[111] A joinder of lawsuits that results in a group action typically requires that tenants' injuries arise from the same instance and implicate overlapping questions of law and fact.[112] Tenants may aggregate their claims through joinder under the right circumstances when their injuries arise from a hazardous condition in a common area, for example.[113] However, where a landlord's neglect manifests in unrelated, diffuse harms, joinder is not a path toward individual tenant relief.[114] Further, even if joinder can be utilized,[115] each joined party would have to be involved in the litigation and courts may disfavor such actions where there are hundreds of tenants joined against one landlord.[116]

Class actions, the most well-known aggregational mechanism, are a type of representative action that allows a named plaintiff to represent another's claims and bind all represented parties.[117] Representative actions are attractive for claim aggregation because they enable representative standing.[118] In contrast to first-party standing,[119] representative standing permits a plaintiff to assert another's rights and legal injury.[120] This, in turn, allows members to recover for their claims without being closely involved in drawn-out litigation.[121] Though class actions are optimal for low-value claims, class actions are not a viable option for tenants to enforce housing codes.[122] Procedural rules, and courts' interpretations of these rules, impose

110 *Id.* § 1.02 cmt. b(1)(A).

111 *Id.*

112 *Id.*

113 *See generally id.* (discussing the dynamics of permissive joinder).

114 *But cf. id.* (reviewing how permissive joinder is appropriate for claims arising out of the same occurrence).

115 *See infra* Part V.C (discussing opportunities in joinder).

116 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010) ("Even when claimants number in the hundreds or thousands, enormous joinders may not occur . . . . States that once permitted massive joinders, such as Mississippi, have also recently restricted them.").

117 *Id.* § 1.02(B).

118 *Cf.* Bradley & Young, *supra* note 106, at 60-61, 71 (explaining how common aggregational mechanisms enable representative standing).

119 Standing doctrine, which differs between state and federal courts and varies significantly among states, generally requires that a plaintiff assert their own legal injury and legal rights to bring suit. Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 KY. J. EQUINE, AGRIC., & NAT. RES. L. 349, 350-53 (2015).

120 Bradley & Young, *supra* note 106, at 6, 60-61, 71 (discussing representative standing as a form of third-party standing that implicates constitutional standing requirements where representatives seek to assert another's injury in fact).

121 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010) (discussing absent class members).

122 Gilles, *supra* note 25, at 1535; Sabbeth, *supra* note 3, at 144.

a high bar on plaintiffs' efforts to certify a class.[123] Among other requirements,[124] plaintiffs must prove (1) "the class is so numerous that joinder is impracticable"; (2) class members share sufficient questions of law or fact in common; and (3) the representative party's claims are typical to members of the class.[125] These actions thus present the same barriers that joinder does, requiring tenants' claims to arise from the same situations.[126] Further, for a class to satisfy the first requirement, numerosity, it must typically consist of forty members.[127] Tenants in buildings that have fewer than twenty units, which make up the vast majority of rental homes,[128] are therefore likely to be precluded from forming a class to assert their rights.[129]

There is another form of representative standing[130] that provides an opportunity for aggregation: associational, or organizational, standing.[131] Associational standing allows associations to sue to assert their members' rights and injuries where members would "otherwise have standing to sue in their own right."[132] The requirements for associational standing[133] are "far

123 Gilles, *supra* note 25, at 1556 (discussing judicially imposed barriers to class certification).

124 A full discussion of how class actions work, and their benefits and limitations, is outside the scope of this Note.

125 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010); FED. R. CIV. P. 23(a); CLASS ACTION REQUIREMENTS, 50 STATE STATUTORY SURVEY: CIVIL LAWS: CIVIL PROCEDURE, Westlaw 0020 SURVEYS 2 (database updated August 2023).

126 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010); FED. R. CIV. P. 23(a); CLASS ACTION REQUIREMENTS, 50 STATE STATUTORY SURVEY: CIVIL LAWS: CIVIL PROCEDURE, Westlaw 0020 SURVEYS 2 (database updated August 2023).

127 1 NEWBERG & RUBENSTEIN ON CLASS ACTIONS § 3:12 (6th ed. 2023) (explaining that classes with fewer than twenty members are generally denied certification).

128 Sarah Crump & Jenny Schuetz, *U.S. Rental Housing Markets Are Diverse, Decentralized, and Financially Stressed*, THE BROOKINGS INST. (Apr. 20, 2021), https://www.brookings.edu/articles/us-rental-housing-markets [https://perma.cc/S3N5-RHTJ] ("Nearly half of rental homes are in small buildings (one to four units), while [twenty-three percent] of rental units are in buildings with [twenty] or more units. Rental housing is a larger share of the housing stock in urban areas.").

129 1 NEWBERG & RUBENSTEIN ON CLASS ACTIONS § 3:12 (6th ed. 2023).

130 "Representative standing" has been used to refer to all actions where a plaintiff represents another's claims, regardless of that plaintiff's first-party legal injury. Bradley & Young, *supra* note 106, at 6, 60-61. "Representational standing" is a type of representative standing, which "rests on the premise that in certain circumstances, particular relationships . . . are sufficient to rebut the background presumption . . . that litigants may not assert the rights of absent third parties." United Food & Commercial Workers Union Local 751 v. Brown Grp., 517 U.S. 544, 557 (1996). *See also* Bradley & Young, *supra* note 106, at 6, 60-61, 68 (quoting 13A RICHARD D. FREER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3531.9.1 (3d ed. Apr. 2020)) (internal quotations omitted).

131 Associations may also assert first-party standing, which is achieved with direct injury to the association's interest. Warth v. Seldin, 422 U.S. 490, 511 (1975) ("Even in the absence of injury to itself, an association may have standing solely as the representative of its members."). Because this Note proposes a mechanism to aggregate many tenants' claims, its discussion will focus on representational standing.

132 Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977); Bradley & Young, *supra* note 106, at 68-69 (2021).

133 *See* discussion *infra* Part IV.

more relaxed" than those for class actions.[134] The association is not required to show that every member was injured, nor that "representation is superior to individual litigation."[135] Thus, while not commonly referred to as an aggregational mechanism,[136] associational standing can be an effective way for a party united by a common interest to bring many individual claims against one defendant.[137] In fact, the United States Supreme Court has recognized the virtues of associational standing, emphasizing that an organization's expertise and resources can support both plaintiffs and courts in collective adjudication.[138]

C. The Benefits of Associational Standing for Tenants

Tenants can derive significant benefits from representational standing, as sharing resources and knowledge can enable stronger advocacy for their closely aligned interests.[139] Aggrieved tenants in a building can form tenant associations to institute a single, substantial, and impactful legal action against their landlord to vindicate their substantive rights.[140] Further, tenants can use this method of claim aggregation to champion all tenants in a building, aid public enforcement, and streamline adjudication of housing claims.[141]

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[134] Brandon L. Garrett, *Aggregation and Constitutional Rights*, 88 NOTRE DAME L. REV. 593, 637 (2012). *See also* International Union, UAW v. Brock, 477 U.S. 274, 288-90 (1986) (rejecting arguments that, for fair and efficient adjudication, an association should satisfy class action requirements); Telecomms. Rsch. & Action Ctr. *ex. rel.* Checknoff v. Allnet Commc'n. Servs., 806 F.2d 1093, 1098 (D.C. Cir. 1986) (Bork, J., concurring) ("By seeking associational standing in this case, [Plaintiff] is trying to avoid some of the burdens imposed by the class action mechanism."). Associational suits may also be maintained where class actions cannot. *See, e.g.*, Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858, 863-64 (N.Y. Civ. Ct. 2021) (upholding associational standing; finding "no basis for class action relief" in housing court).

[135] 13A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3531.9.5 (3d ed. 2023).

[136] *See cf.* Bradley & Young, *supra* note 106, at 68-71 (treating associational standing as separate from aggregation mechanisms).

[137] *Cf.* Roche, *supra* note 92 (proposing associational standing as a superior mechanism to class actions to aggregate mass tort claims); Garrett, *supra* note 134, at 693 ("The Court's associational and organizational cases provide important tools that can encourage group . . . litigation . . . only if the underlying rights are amenable to aggregate treatment."); Sarah A. Westby, *Associations to the Rescue: Reviving the Consumer Class Action in the United States and Italy*, 20 TRANSNAT'L L. & CONTEMP. PROBS. 157 (2011) (noting that associational standing is an aggregational device).

[138] *UAW*, 477 U.S. at 288-90 (acknowledging that people form associations to vindicate shared interests).

[139] *Magzamen*, 149 N.Y.S.3d at 863 ("[F]orming a tenants association consolidates potential building-wide issues, unites the individuals' resources, [and] promotes judicial economy."); Heilman, *supra* note 92, at 252, 271 (discussing that plaintiffs alleging housing discrimination often lack financial means and knowledge of the law and thus benefit from organizational resources and advocacy).

[140] *See generally* Brescia, *supra* note 12.

[141] *See generally id.*; Dodson, *supra* note 93.

Tenant associations make it easier for tenants to find counsel to represent them in affirmative actions against landlords.[142] Even if tenants could secure representation with fee-shifting provisions and contingency fees, cases are much more valuable to plaintiffs' lawyers if they can recover damages from a high volume of violations.[143] Such aggregate suits would incentivize tenants' lawyers to pursue cases where landlords have perpetuated clear-cut, dangerous, and wanton violations of housing codes.[144] Further, the ability to help multiple tenants with moderate incomes, as opposed to individual tenants with higher incomes, would allow plaintiffs' attorneys to broaden their potential client bases.[145] Additionally, an alternative to class actions opens the door for large groups of tenants to secure more types of legal aid.[146] For example, the Legal Services Corporation ("LSC") is barred from bringing class actions.[147] Associations, however, provide an avenue for LSC lawyers to help tenants realize the benefits of aggregation for no- and low-income plaintiffs.[148] Ultimately, by representing tenant associations, private, non-profit, and government-funded tenants' lawyers are able to help more tenants at once through efficient, aggregate litigation.[149]

Further, positive outcomes of lawsuits and community organizing benefit entire communities of tenants.[150] Successful suits for injunctive relief improve the lives and environments of everyone in the building.[151] Tenants see systematic improvements to both their rental units and common spaces, and landlords are prohibited from perhaps addressing one tenant's complaint while ignoring others' similar grievances.[152] Further, associations unite tenants in a building in a common cause against the landlord, rectifying—at

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142 Krishnan, *supra* note 9, at 237. *See generally* Sabbeth, *supra* note 3, at 123-25, 144 (reviewing the difficulty that poor tenants have in securing counsel on their own in the free market).

143 Sabbeth, *supra* note 3, at 123-25, 144; *see supra* notes 51-52 (discussing fee-shifting and contingency fees).

144 *See generally* Sabbeth, *supra* note 3, at 121, 144 (describing contingency arrangements and the benefit of aggregating small value claims).

145 *See generally id.* at 119-20, 144 (describing market-based enforcement).

146 DILLER & SAVNER, *supra* note 96, at 4.

147 *Id.*

148 *See generally id.* (discussing the prohibition on class actions, specifically).

149 Dodson, *supra* note 93, at 8. *See* Krishnan, *supra* note 9, at 237.

150 *See generally* Gilles, *supra* note 25, at 1552-53 (noting that class-wide remedies can "reform problematic practices").

151 *See generally id.* (discussing the benefits of injunctive relief in group litigation).

152 *See, e.g.*, Krishnan, *supra* note 9, at 240 (describing a landlord's "radical transformation[]" of an entire building as a result of collective action); Sabbeth, *supra* note 3, at 108 ("[Landlords] might make repairs for relatively privileged tenants but ignore repeated complaints from poor tenants.").

least in part—the power imbalance that tenants face when they complain to or negotiate with their landlord.[153]

Tenant associations also allow tenant leadership to represent tenants who may not have the resources or knowledge necessary to vindicate their own rights.[154] Even though a rental unit often reflects tenants' financial means,[155] tenants' socio-economic status may vary substantially among units.[156] Rent-controlled units, renovations, and large discrepancies in unit occupancy may produce large differences in income, education, age, and resources among tenants in one building.[157] Those residents, however, may be united by the same grievances.[158] Though one apartment's leak can lead to another's mold, landlords are more likely to neglect repairs for vulnerable tenants.[159] Tenant associations offer tenants in a building the opportunity to establish an open dialogue with each other and their landlord about their landlord's neglect or misfeasance.[160] Then, tenants who have the time, knowledge, and resources to lead the association can amplify the voices and experiences of others to help their neighbors get the redress they deserve.[161]

Combining the claims of tenants living in the same building can supplement agency enforcement and reduce the burden in housing court.[162]

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153 Krishnan, *supra* note 9, at 237; Christopher Bangs, *A Union for All: Collective Associations Outside the Workplace*, 26 GEO. J. ON POVERTY L. & POL'Y 47, 58-62 (2018). *See generally* Brescia, *supra* note 12 (detailing the power of organizing a tenant association around a "common enemy" to institute a coordinated campaign to keep tenants in their homes). Increased bargaining power may also deter landlords from neglecting repairs, as they would be more concerned about tenants' ability to bring suit and would be more vigilant about their legal duties. *See* Gilles, *supra* note 25, at 1550 ("In general, deterrence is the best and highest use of small value class actions . . . [I]n the context of low-income groups, the deterrence function of class litigation takes on heightened significance.").

154 *See* Brescia, *supra* note 12, at 730.

155 Sabbeth, *supra* note 3, at 122.

156 *E.g.*, Krishnan, *supra* note 9, at 244, 250; Brescia, *supra* note 12, at 752.

157 *See, e.g.*, Krishnan, *supra* note 9, at 244, 248, 250 (describing a building split between long-term and short-term residents who pay higher and lower rents, respectively; noting that in "buildings with smaller tenant groups . . . the rent of one new resident constituted a significant percentage of monthly [rent]"); Brescia, *supra* note 12, at 752.

158 *E.g.*, Krishnan, *supra* note 9, at 248; Brescia, *supra* note 12, at 752-53.

159 Sabbeth, *supra* note 3, at 108; Uzdavines, *supra* note 61, at 164 ("Middle-class residents are more likely to complain than residents in poorer and more deteriorated neighborhoods and most likely to get results because they are well enough organized to document violations, demanding enough to monitor the progress of complaints, and astute enough to enlist the support of political stakeholders.").

160 *E.g.*, Brescia, *supra* note 12, at 731-32 (describing information-sharing at tenant association meetings).

161 *See generally* Uzdavines, *supra* note 61, at 164 (noting the resources available to middle-class residents that makes them more likely achieve results); Krishnan, *supra* note 9, at 246-49 (discussing the potential benefits of involving more resourced tenants in a building; noting important considerations in effectively organizing such tenants).

162 *Cf.* Dodson, *supra* note 93, at 6-8 (stating that "[n]early everyone," including courts, can benefit from the efficiency that aggregation enables); Ferron, *supra* note 61, at 222-23 (explaining that private enforcement can supplement public enforcement).

Actions by tenant associations can reduce the burden on administrative agencies by remediating large groups of violations by one actor.[163] Agency reports can help prove tenants' cases in court.[164] Thus, associations will have to work with agencies to inspect and document building violations.[165] Associations can help coordinate and centralize inspections by calling agencies to inspect multiple concerns on the same day (as opposed to multiple calls and visits across multiple days), letting inspectors into the building or individual units, and distributing the agency reports to tenants.[166] Facilitating inspections and improvements of buildings further promotes the preservation and improvement of property—an important principle in property law and an important goal of municipalities.[167]

Additionally, claim aggregation through tenant associations can make adjudication itself more efficient.[168] Discovery in one suit is less complicated when a multitude of legal claims arise from the same conduct.[169] Defendant landlords would not be required to continuously produce the same evidence, and tenants would be able to share information to build their case,[170] which would be particularly helpful if a landlord misrepresents or omits information to some tenants and not others. In turn, judges could more easily resolve questions of fact and law with evidence that holistically reflects the pattern of behavior in the building.[171] Further, combining the claims of all tenants in a building would significantly reduce the number of cases in housing court.[172] Aggregations can also reduce caseloads because the threat of lawsuits, particularly those that are large and expensive, can deter landlords' illegal behavior.[173]

Group actions can also address some criticisms of litigation-focused, legal-centric solutions to access-to-justice issues.[174] A lawyer representing

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163 *Cf.* Ferron, *supra* note 61, at 222-23.

164 *See, e.g.,* N.Y.C. ADMIN. CODE § 27-2115(h)(2)(i) ("[T]o the extent . . . [an] allegation is based on physical conditions of a dwelling or dwelling unit, such allegation must be based at least in part on one or more violations of record issued by the department or any other agency."); Sabbeth, *supra* note 3, at 131 (discussing the high value courts place on inspectors' testimony).

165 *Cf.* N.Y.C. ADMIN. CODE § 27-2115(h)(2)(i); Sabbeth, *supra* note 3, at 131.

166 *See generally* Uzdavines, supra note 61, at 164 (discussing the benefits of being well-organized to document violations).

167 Super, *supra* note 28, at 402 ("States . . . have reasons to want to ameliorate bad housing conditions completely independent of any concern for the well-being of low-income tenants.").

168 Dodson, *supra* note 93, at 6.

169 *Id.* at 3-4.

170 *Id.*

171 *See generally* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010) ("Ideally, the same evidence will also support classwide findings on all class-related substantive issues.").

172 Dodson, *supra* note 93, at 10-11.

173 *See* Sabbeth, *supra* note 3, at 137; Gilles, *supra* note 25, at 1538.

174 Brescia, *supra* note 12, at 761-62; Greene, *supra* note 71, at 1317.

the claims of a tenant association has a duty to effectively listen to the community of tenants and represent their needs.[175] Further, a community of plaintiffs may be more willing to engage with a legal system that they perceive as oppressive and discriminatory if they are working in concert with their neighbors and thus less individually vulnerable to adverse outcomes.[176] Public interest lawyers representing tenant associations in New York City have accomplished these ends.[177] Tenants' attorneys have found that "the pervasive nature of displacement in North Brooklyn requires collective mobilization" to "combat this inequity by providing legal counsel to an organized group of residents in a building—a tenant association—that utilizes collective action and economic power to defend itself."[178]

IV. PROBLEM: THE BARRIERS TO AND LIMITATIONS OF AGGREGATION VIA ASSOCIATIONAL ACTIONS

For tenants across the United States to vindicate established rights to safe, quality housing via an association, they must first be able to get into court.[179] Whether tenant associations can bring their members' claims—and which claims they can bring—turns on a jurisdiction's doctrine on associational capacity and associational standing, as well as its landlord-tenant laws.[180] State and local governments are the primary bodies involved in protecting and enforcing tenants' substantive rights.[181] Federal law, however, informs much of state associational standing procedure and considerations.[182]

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175 Notwithstanding that difficulties may arise if tenants have divergent interests. PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.05(f) (AM. L. INST. 2010); Brescia, *supra* note 12, at 752.

176 *See* Krishnan, *supra* note 9, at 237-40 (noting members' resolve and group cohesion in organizing efforts); Brescia, *supra* note 12, at 731-32, 755-56 (describing tenants' concerns in tenant association meetings).

177 Krishnan, *supra* note 9, at 237. *See also* Brescia, *supra* note 12, at 755-56 (recounting the success of a multi-pronged approach that included organizing a tenant association alongside class action litigation to protect affordable housing).

178 Krishnan, *supra* note 9, at 237.

179 D.C. Barrett, Annotation, *Suability of Individual Members of Unincorporated Association as Affected by Statute or Rule Permitting Association to Be Sued as an Entity*, 92 A.L.R.2d 499, at *1 (2022); Sabbeth, *supra* note 3, at 119-20.

180 *See* Barrett, *supra* note 179, at *1; RESTATEMENT (THIRD) OF PROP. (SERVITUDES) § 6.11 reporter's note (AM. L. INST. 2000).

181 Sabbeth, *supra* note 3, at 112; HUSSEIN & GALLAGHER, *supra* note 6, at 1-2; FREDDIE MAC, *supra* note 6, at 2.

182 Roche, *supra* note 92, at 1465; FED. R. CIV. P. 17(b).

A. Capacity to Sue

To bring suit, an association must have the capacity to sue or be sued.[183] Capacity, while often conflated or confused with standing, is a distinct legal term that refers to a "party's personal right to litigate."[184] Whether an entity has capacity depends on how it was formed (incorporated or unincorporated) and the laws of its jurisdiction.[185] While some jurisdictions do not permit unincorporated associations to sue in their name, statutes also can expressly confer capacity onto certain types of associations, whether they are incorporated or not.[186] For example, most states have statutes that expressly empower condominium associations to litigate in condominium-related matters.[187] Thus, if a jurisdiction precludes capacity for unincorporated associations, a rental tenant association must have statutorily conferred capacity or be incorporated to bring suit.[188]

B. The Current Scheme of Associational Standing

Though associations may assert their members' legal claims, injuries, and interests, standing doctrine limits the scope of their assertion of their rights, largely disfavoring claims that are "too inherently personal" to be controlled by a third party.[189] The boundaries of this doctrine, and the presumption against associational standing for personalized claims, are generally governed by a common law test that some legislatures have adopted, modified, or abridged.[190]

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183 6A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1542 (3d ed. 2023); FED. R. CIV. P. 17.

184 6A WRIGHT & MILLER, *supra* note 183, § 1542 ; [1 pt. 3] PATRICK J. ROHAN & MELVIN A. RESKIN, REAL ESTATE TRANSACTIONS: CONDOMINIUM LAW AND PRACTICE—FORMS § 42.08(1) (Matthew Bender ed. 2024).

185 4 DANIEL R. COQUILLETTE, GREGORY P. JOSEPH, GEORGENE M. VAIRO & CHILTON DAVIS VARNER, MOORE'S FEDERAL PRACTICE § 17.26(1), (4)(a) (Matthew Bender ed., 3d ed. 2023).

186 Barrett, *supra* note 179; [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(a).

187 [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(a) n.4 (listing statutes in Alabama, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Massachusetts, New York, Ohio, and Texas).

188 *Id.* § 42.08(2)(a).

189 *See* discussion *infra* Parts IV.B.1, IV.B.3. *See, e.g.*, Tenants Ass'n of Park Santa Anita v. Southers, 272 Cal. Rptr. 361, 368 (Cal. Ct. App. 1990).

190 Roche, *supra* note 92, at 1463, 1465; Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220 (N.C. Ct. App. 2001); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(b).

1. Common Law[191] Associational Standing

A significant number of states have adopted a version of the federal common law test[192] for associational standing set forth by the Supreme Court in *Hunt v. Washington State Apple Advertising Commission*.[193] The *Hunt* test limits the types of representative actions associations may bring on behalf of their members:[194]

[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.[195]

The first two prongs of the *Hunt* test present relatively few barriers for tenant associations.[196] The first prong requires that organizations show sufficient member injury, which depends on the type of claims tenants seek to assert.[197] This prong is easier to satisfy where tenants are entitled to enforce the housing code via a private right of action, such as pursuant to the New York City Administrative Code provision that allows tenants to bring an action against landlords who refuse to repair any housing code violations.[198] The requirement of a private right of action, however, is a relatively small burden for associations where tenants have clearly established substantive rights.[199] The second prong seeks to ensure that the organization's litigants have a sufficient stake in the outcome of the suit to represent members' interests.[200] This, too, is a low barrier, as tenant associations may fulfill this requirement even if they are formed to protect their members' communal rights as tenants.[201] Courts in a few states have upheld associational standing where tenant associations were formed to enforce tenants' rights.[202]

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191 The test discussed in the following section is derived from the common law, though some states have codified its requirements for certain associations. *See, e.g., Creek Pointe*, 552 S.E.2d at 224.

192 Roche, *supra* note 92, at 1465.

193 Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333 (1977).

194 *Id.* at 343.

195 *Id.* at 343.

196 13A WRIGHT & MILLER, *supra* note 135, § 3531.9.5.

197 *See id.*

198 N.Y.C. ADMIN. CODE § 27-2115(h)(1).

199 *See supra* note 31 and accompanying text; Sabbeth, *supra* note 3, at 99-100, 111-116.

200 13A WRIGHT & MILLER, *supra* note 135, § 3531.9.5; United Food & Commercial Workers Union Local 751 v. Brown Grp., 517 U.S. 544, 555-56 n.6 (1996).

201 13A WRIGHT & MILLER, *supra* note 135, § 3531.9.5; Tenants Ass'n of Park Santa Anita v. Southers, 272 Cal. Rptr. 361, 362 (Cal. Ct. App. 1990); Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858, 863 (N.Y. Civ. Ct. 2021).

202 *Southers*, 272 Cal. Rptr. at 362; *Magzamen*, 149 N.Y.S.3d at 863.

The third prong of the *Hunt* test presents the largest barrier for tenants.[203] Here, where a landlord's negligence or misfeasance causes harm that is inherently personal or individualized, a group claim may be difficult to maintain.[204] For example, by precluding standing where individual participation is required in the suit, tenants are barred from redressing damage to their individual units and personal claims such as emotional distress.[205] The Supreme Court has further held that this requirement prevents associations from recovering monetary relief[206] because damages are often particular to individual injuries and require members to provide individualized proof.[207] Though injunctions to redress violations and other prospective relief can be valuable remediation for some groups of tenants,[208] providing tenants meaningful access to justice hinges on their ability to remediate various personal claims and all pecuniary damages.[209]

The law recognizes exceptions to this prohibition against personalized damages or claims that require members' individual participation.[210] In 1996, the Supreme Court clarified the nature of the *Hunt* third prong in *United Food and Commercial Workers Union Local 751 v. Brown Group*.[211] The Court held that the third requirement can be abrogated by Congress because it is a prudential limitation on standing, meaning a limitation imposed as a matter of judicial "self-restraint."[212] The Court observed that the third prong "is best seen as focusing on these matters of administrative convenience and efficiency" and emphasized that it "may hedge against any risk that the damages recovered . . . will fail to find their way into the pockets of the members on whose behalf the injury is claimed."[213] Prudential requirements, unlike constitutional standing requirements, can be abrogated by Congress.[214]

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203 Roche, *supra* note 92, at 1498.

204 *See generally Southers*, 272 Cal. Rptr. 361; *Magzamen*, 149 N.Y.S.3d at 863.

205 Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

206 *Id.* at 343 (quoting Warth v. Seldin, 422 U.S. 490, 515 (1975)) (noting that *Warth* set forth the types of relief associations could properly pursue); *Warth*, 422 U.S. at 515-516. (denying an association's standing to claim damages for injuries to individual members); 13A WRIGHT & MILLER, *supra* note 135, § 3531.9.5; United Food & Commercial Workers Union Local 751 v. Brown Grp., 517 U.S. 544, 554 (1996) ("[*Warth*] and later precedents have been understood to preclude associational standing when an organization seeks damages on behalf of its members.").

207 *Warth*, 422 U.S. at 515-516.

208 *Id.* at 515 (determining that declaratory, injunctive, or other forms of prospective relief "reasonably . . . will inure to the benefit of those members of the association actually injured.").

209 Sabbeth, *supra* note 3, at 120-21, 144.

210 *E.g.*, *United Food*, 517 U.S. 544; Pa. Psychiatric Soc'y v. Green Spring Health Servs., 280 F.3d 278 (3d Cir. 2002).

211 *United Food*, 517 U.S. at 558.

212 *Id.*; Barrows v. Jackson, 346 U.S. 249, 255 (1953) ("Apart from [constitutional standing requirements], this Court has developed a complementary rule of self-restrain for its own governance.").

213 *United Food*, 517 U.S. at 556-57.

214 *Id.* at 558

Therefore, in *United Food*, the Court found that an association had standing to recover individualized damages pursuant to express congressional authorization and upheld a union's standing to seek its members' backpay.[215] Some circuits have interpreted the third prong narrowly, permitting some member participation for prospective relief.[216] Notably, monetary relief remains unavailable to associations in federal court without a statute providing otherwise.[217]

In state courts, many jurisdictions have adopted *Hunt*[218] or more liberal standing tests,[219] but how states or localities manage the prudential concerns of individual participation and damages varies significantly across jurisdictions.[220] Generally, states disallow individual participation for associational claims and only find associational standing for generalized grievances.[221] However, contrary to the practice in federal courts, a few state courts have allowed associational standing for damages claims that are shared among members.[222] Other states depart from *Hunt* by imposing additional requirements for associations to properly represent members' interests.[223]

The decisions in *Creek Pointe Homeowner's Association v. Happ* and *Tenants' Association of Park Santa Anita v. Southers* illustrate state courts' concerns about the feasibility of adjudicating individual interests in associational actions.[224] Both decisions, applying standing tests that

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[215] *Id.*

[216] Pa. Psychiatric Soc'y v. Green Spring Health Servs., 280 F.3d 278 (3d Cir. 2002) (allowing limited individualized participation of members); M.O.C.H.A. Soc'y v. City of Buffalo, 199 F. Supp. 2d 40 (W.D.N.Y. 2002) (permitting individualized participation for injunctive and declaratory relief); Retired Chi. Police Ass'n v. City of Chicago, 7 F.3d 584 (7th Cir. 1993); Hosp. Council of W. Pa. v. City of Pittsburgh, 949 F.2d 83 (3d Cir. 1991).

[217] Roche, *supra* note 92, at 1499.

[218] *Id.* at 1465.

[219] *See* Crescent Park Tenants Ass'n v. Realty Equities Corp., 275 A.2d 433 (N.J. 1971) (emphasizing the court's liberal approach to standing; finding associational standing where there was sufficient evidence of the association's stake and adverseness); Pa. Med. Soc'y v. Dep't of Pub. Welfare, 39 A.3d 267 (Pa. 2012) (finding representational standing where an association alleges at least one of its members suffered a legal injury).

[220] *Compare* Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220, 226 (N.C. Ct. App. 2001), *and* Tenants Ass'n of Park Santa Anita v. Southers, 272 Cal. Rptr. 361 (Cal. Ct. App. 1990), *with* Villa Sierra Condo. Ass'n v. Field Corp., 787 P.2d 661 (Colo. App. 1990), *and* International Association of Firefighters, Local 1789 v. Spokane Airports, 45 P.3d 186 (Wash. 2002).

[221] *See Crescent Park Tenants Ass'n*, 275 A.2d 433 (permitting standing for a tenant association to pursue generalized, not individual, grievances); Snyder v. Callaghan, 284 S.E.2d 241 (W. Va. 1981) (finding that an association of tenants had standing under the three prongs of *Hunt*); *Southers*, 272 Cal. Rptr. at 367; *Creek Pointe*, 552 S.E.2d 220.

[222] *See International Association of Firefighters, Local 1789*, 45 P.3d 186; *Villa Sierra*, 787 P.2d 661.

[223] *E.g.*, Beazer Homes Holding Corp. v. Eighth Jud. Dist. Ct., 291 P.3d 128 (Nev. 2012); Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC, 741 S.E.2d 613 (W. Va. 2013).

[224] *Southers*, 272 Cal. Rptr. 361; *Creek Pointe*, 552 S.E.2d 220.

precluded individualized participation, underscore that such claims can be unwieldy and thus inappropriate for the court to adjudicate via representation.[225] In denying a homeowner's association standing to recover compensatory and punitive damages, the *Creek Pointe* court observed the difficulty of calculating such damages: "Plaintiff Kremer alleged that the fence actually prevents access to part of his land; another homeowner might assert that the fence reduced the value of his property, spoiled the view from the front porch, or prevented the use of the road itself."[226] In *Southers*, a California appellate court denied associational standing for "damages/injuries for anxiety, emotional distress, or personal injuries."[227] Such injuries, the court decided, were "too intangible and too inherently personal to reasonably constitute a community of interest."[228] However, the *Southers* court did allow the association's standing on other claims, which included the abatement of a public nuisance and other injunctive relief and "generally applicable" monetary relief in the form of legal fees and statutory fines.[229]

In some jurisdictions, damages claims withstand *Hunt*'s prudential scrutiny if injuries are suffered in common.[230] For example, in *Villa Sierra Condominium Association v. Field Corporation*, a Colorado court permitted a condominium association to seek damages because the damages were shared.[231] Regarding the costs to repair the building and the landscaped areas, the court stated, "the damages sought to be recovered are not damages sustained by any individual . . . [t]o the extent that any damage has been incurred, it has resulted from injury to the property in which all of the unit owners have a common interest."[232] In the same vein, the Supreme Court of Washington in *International Association of Firefighters, Local 1789 v. Spokane Airports* adopted a rule permitting associational standing for members' monetary damages where they are "certain, easily ascertainable, and within the knowledge of the defendant" and thus do not require individual member participation.[233] The court found such a "pragmatic"

[225] *Creek Pointe*, 552 S.E.2d at 226 (reading the statute to codify the *Hunt* test and denying claims that require members' individual participation); *Southers*, 272 Cal. Rptr. at 366-68 (applying common law associational standing that prohibits individual participation).

[226] *Creek Pointe*, 552 S.E.2d at 226.

[227] *Southers*, 272 Cal. Rptr. at 368.

[228] *Id.* at 367-68.

[229] *Id.* at 361, 364, 367.

[230] Villa Sierra Condo. Ass'n v. Field Corp., 787 P.2d 661, 667 (Colo. App. 1990); International Association of Firefighters, Local 1789 v. Spokane Airports, 45 P.3d 186, 190 (Wash. 2002).

[231] *Villa Sierra*, 787 P.2d at 667.

[232] *Id.*

[233] *International Association of Firefighters, Local 1789*, 45 P.3d at 190.

approach "preferable to a rule that serves to automatically deny standing to an association that seeks monetary damages on behalf of its members."[234]

Other courts reckon with concerns about individual interests by erecting more barriers to litigation. For example, some courts impose requirements on suits pursuing individual interests that are similar to class actions.[235] In *Beazer Homes Holding Corporation v. Eighth Judicial District Court of Nevada*, the Supreme Court of Nevada held that a court must analyze representative actions by associations utilizing state class action requirements to determine how an action should proceed.[236] The court noted that this rule was "largely based on practical difficulties in managing sizable . . . cases."[237] Similarly, the West Virginia Supreme Court of Appeals in *University Commons Riverside Home Owners Association v. University Commons Morgantown, LLC* deferred to a "mass litigation" model to manage individual cases.[238] Other states deny associations representational standing for members' personal interests without a statute expressly providing for such standing.[239]

Ultimately, even if a state allows associations to bring claims and recover for shared conditions, violations, and damages, state common law associational standing doctrine often prohibits individual member participation and individual recovery for any individual interests.[240]

2. Statutory Conferrals of Associational Standing

Express statutory conferrals provide the strongest basis for associational standing and can address the most significant limitations of the common law test.[241] For tenant associations specifically, very few state statutes or municipality ordinances expressly permit suits by groups of

234 *Id.*

235 Beazer Homes Holding Corp. v. Eighth Jud. Dist. Ct., 291 P.3d 128 (Nev. 2012).

236 *Id.*

237 *Id.* at 135.

238 Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC, 741 S.E.2d 613, 619 (W. Va. 2013) ("[T]his court finds that the most prudent approach from this point forward is to proceed in accordance with Rule 26, [which contemplates mass litigation].").

239 *Beazer Homes*, 291 P.3d at 133-34 ("[W]ithout statutory authorization, a homeowners' association does not have standing to bring suit on behalf of its members."); Jablonsky v. Klemm, 377 N.W.2d 560 (N.D. 1985) (finding that, where the condominium act did not authorize an association to sue, it did not have standing to sue on behalf of its members).

240 *See, e.g.*, Tenants Ass'n of Park Santa Anita v. Southers, 272 Cal. Rptr. 361 (Cal. Ct. App. 1990); Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220 (N.C. Ct. App. 2001).

241 Thomas G. Fischer, Annotation, *Standing to Bring Action Relating to Real Property of Condominium*, 74 A.L.R.4th 165 § II(A)(3) (2024); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(b), (5)(a).

tenants.[242] The District of Columbia and New York City provide two examples that do not address the problem presented by *Hunt*'s third prong.[243] The D.C. Code essentially adopts the first and third prongs by granting standing to tenant organizations if at least one member has standing, represented members have provided written authorization for the organization to represent them, and the claim and relief do not require members' individual participation.[244] The New York City Administrative Code, which only permits injunctive relief for most claims,[245] merely satisfies *Hunt*'s first prong, and courts hold that associations must demonstrate that members' individual participation is not necessary for adjudication.[246]

As such express standing provisions for tenant associations are rare, there is little case law assessing how these statutory conferrals can abrogate states' standing requirements for all types of associations.[247] However, condominium and homeowners' associations ("HOAs") provide a relevant legal analogue to tenant associations because they are charged with representing members' collective housing-related interests.[248] Further, many states have enacted Common Interest Ownership Acts ("CIOAs"), which courts have held authorize associational standing, altering common law associational standing requirements.[249] The corresponding case law reveals how courts may interpret such statutes to permit or deny associational standing for claims that common law doctrine bars.[250] Generally, CIOAs can confer standing on associations litigating on behalf of their members'

242 Bangs, *supra* note 153, at 61, app. B at 125-49 (surveying state tenant association laws, some of which limit suits by type of tenant association or type of claim).

243 D.C. CODE § 42-3502.16a (2024); N.Y.C. ADMIN. CODE § 27-2115(h)(1), (i) (allowing a "tenant or *group of tenants*" to "*apply individually or jointly* to the Housing Part for an order directing the owner . . . to appear before the court" (emphasis added)).

244 D.C. CODE § 42-3502.16a (requiring, among other things, that "one or more members . . . have standing . . . in their own right").

245 N.Y.C. ADMIN. CODE §§ 27-2115(h), (i), (m), 27-2005(d) (providing a private right of action to enforce the housing code for tenants seeking injunctions for both hazardous and non-hazardous violations and monetary remedies for harassment violations).

246 Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858, 863 (N.Y. Civ. Ct. 2021) (applying a test consistent with *Hunt* and finding the first prong satisfied pursuant to N.Y.C. ADMIN. CODE § 27-2115(h)(1), (i)). *See also* 351-359 St. v. E.163 LLC, No. 13412/2019, 2020 NYLJ LEXIS 1266, at *10 (Civ. Ct. N.Y.C. July 15, 2020) (granting a tenant association standing under the New York City Administrative Code).

247 *See generally* Bangs, *supra* note 153, at 61, app. B at 125-49 (listing state tenant association laws, of which there are few regarding standing specifically).

248 *See generally* [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08 (2)(a)-(b), (3), (5)(a).

249 *Id.* § 42.08(2)(b), (3) n.40.

250 *See* RESTATEMENT (THIRD) OF PROP. (SERVITUDES) § 6.11 reporter's note (AM. L. INST. 2000); Westfield Ins. Co. v. Nat'l Decorating Serv., 863 F.3d 690 (7th Cir. 2017).

common and individual interests, even where damages are sought.[251] However, courts' interpretations of such provisions vary.[252]

Some jurisdictions hold that associations have standing to litigate on behalf of members' individual interests, even in the absence of a statute that expressly provides for such claims.[253] For example, in *Raven's Cove Townhomes, Inc. v. Knuppe Development Company*, the First Appellate District of California construed a state statute governing class actions to also authorize HOAs to bring representative suits on behalf of their members.[254] There, the court found that an HOA satisfied the requirements for a representative action, and upheld its standing to pursue damage to owners' individual units.[255] Under this precedent, another California court found an HOA had standing to pursue members' individual private nuisance claims in *3944 Kentucky Homeowners Association v. Baked Potato*.[256]

Similarly, in *Heritage Village Owners Association, Inc. v. Golden Heritage Investors, Ltd.*, a Colorado court upheld an HOA's standing to assert claims for damage to individual units.[257] There, Colorado's CIOA provided that an association may litigate in its own name "on behalf of itself or two or more unit owners on matters affecting the common interest community," and this was interpreted to include "individual units" within the definition of "common interest community."[258] Indeed, in *University Commons*, the Supreme Court of Appeals of West Virginia cited a national trend in upholding representational standing for HOA members' individual claims.[259] Along with finding that the HOA had standing to pursue members' common interests without joining them individually, the court permitted claims for damage to individual units because the claims were related to the associations' responsibilities and obligations.[260]

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[251] Fischer, *supra* note 241, § II(A)(3); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(b), (5)(a).

[252] RESTATEMENT (THIRD) OF PROP. (SERVITUDES) § 6.11 reporter's note (AM. L. INST. 2000); *Westfield Ins. Co.*, 863 F.3d 690 (finding that the Act allowing a condominium association representational standing in matters involving "more than one unit" does not confer standing to the association to sue for individual owners' property damage).

[253] Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., 171 Cal. Rptr. 334 (Cal. Ct. App. 1981); Heritage Vill. Owners Ass'n v. Golden Heritage Invs., Ltd., 89 P.3d 513 (Colo. App. 2004).

[254] *Raven's Cove*, 171 Cal. Rptr. 334.

[255] *Id.* at 340 ("The two requirements . . . for a *representative* action are an ascertainable class and a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (emphasis in original)).

[256] 3944 Ky. Homeowners Ass'n v. Baked Potato, No. 21BBCV00792, 2021 Cal. Super. LEXIS 73385 (Super. Ct. Cal. Dec. 3, 2021).

[257] *Heritage Vill.*, 89 P.3d 513.

[258] *Id.* (citing Yacht Club II Homeowners Ass'n v. A.C. Excavating, 94 P.3d 1177 (Colo. App. 2003)).

[259] Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC, 741 S.E.2d 613 (W. Va. 2013). *See also Yacht Club II*, 94 P.3d at 1177.

[260] *Univ. Commons*, 741 S.E.2d at 619-20.

Other jurisdictions, however, read statutes that permit representative actions very narrowly.[261] In *MetroClub Condo Association v. 201-59 North Eighth Street Associates, L.P.*, a Philadelphia Court read a near-identical provision to that in *Heritage*[262] as precluding a condominium association from asserting owners' individual claims.[263] In *Creek Pointe*, the Court of Appeals of North Carolina read a statute conferring standing to HOAs on "matters affecting the planned community" as a mere reiteration of common law standing doctrine.[264] The court found, under the third prong of *Hunt*, that the members' required individual participation precluded the association's standing.[265]

Notably, the statutes in *Raven's Cove*, *Heritage Village*, *MetroClub*, and *Creek Pointe* did not expressly state that an association can recover for individual interests.[266] Indeed, express provisions that permit individualized participation or damages can effectively abrogate such prudential considerations.[267] The California Civil Code and New York's Real Property Law provide examples of laws with detailed, specific provisions conferring standing for common-interest community associations to bring representative actions.[268] New York Real Property Law section 339-dd provides, in contrast to the provisions considered in *Heritage* and *MetroClub*,[269] that condominium boards may bring "any cause of action relating to the common elements or more than one unit."[270] Under this provision, in *Residential Board of Managers of Zeckendorf Towers v. Union Square-14th Street Associates*, New York's Appellate Division, First Department upheld a condominium board's standing to allege fraud on behalf of individual unit owners.[271] In *Sutton Apartments Corporation v. Bradhurst 100 Development*

261 MetroClub Condo. Ass'n v. 201-59 N. Eighth St. Assocs., No. 4545, 2013 Phila. Ct. Com. Pl. LEXIS 352, at *15 (Common Pleas Ct. Phila. Cnty. 2013); Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220 (N.C. Ct. App. 2001).

262 *Heritage Vill.*, 89 P.3d 513. The Pennsylvania Act permits standing "on behalf of two or more unit owners on matters affecting the condominium." *MetroClub*, No. 4545, 2013 Phila. Ct. Co. Pl. LEXIS 352, at *15.

263 *MetroClub*, No. 4545, 2013 Phila. Ct. Co. Pl. LEXIS 352, at *15.

264 *Creek Pointe*, 552 S.E.2d 220.

265 *Id.*; Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333 (1977).

266 Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., 171 Cal. Rptr. 334 (Cal. Ct. App. 1981); *Heritage Vill.*, 89 P.3d 513; *MetroClub*, No. 4545, 2013 Phila. Ct. Co. Pl. LEXIS 352; *Creek Pointe*, 552 S.E.2d 220.

267 Fischer, *supra* note 241, § II(A)(3); RESTATEMENT (THIRD) OF PROP. (SERVITUDES) § 6.11 reporter's note (AM. L. INST. 2000) ("[I]n the absence of a statute, results are more varied with respect to the right of the association to sue to vindicate rights of individual owners.").

268 CAL. CIV. CODE § 5980 (Deering 2024); N.Y. REAL PROP. LAW § 339-dd (Consol. 2024).

269 *Heritage Vill.*, 89 P.3d 513; *MetroClub*, No. 4545, 2013 Phila. Ct. Co. Pl. LEXIS 352.

270 N.Y. REAL PROP. LAW § 339-dd.

271 Residential Bd. of Managers of Zeckendorf Towers v. Union Square-14th St. Assocs., 594 N.Y.S.2d 161 (N.Y. App. Div. 1993).

LLC, that same court found a condominium board had standing to recover shared damages for common elements of the building.[272] California Civil Code section 5980 contains similar language, stating:

> An association has standing[,] . . . without joining [its] members, in matters pertaining to . . .
>
> > . . . [d]amage to a separate interest that the association is obligated to maintain or repair[, or]
> > . . . [d]amage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.[273]

Under this statute, California courts have upheld common-interest community associations' standing to assert claims for damage to separate interests not owned by the association itself.[274] In *Sierra Palms Homeowners Association v. Metro Gold Line Foothill Extension Construction Authority*, a California appellate court permitted an HOA to establish standing for damage to a common boundary wall even though it did not own that portion of the property.[275]

Clear statutory conferrals can address many of the limitations of common law standing.[276] Statutes can pave the way for an association to bring claims for damages, such as in *Sutton Apartments*, and even damages to individual units, as in *Raven's Cove*, *Heritage Village*, and *University Commons*.[277] Express provisions can further allow associations to pursue members' individual interests, such as in *Residential Board of Managers*.[278] Such cases illuminate that, with statutory rights, tenant associations may be able to bring claims for shared monetary relief, damages to individual units,

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272 Sutton Apartments Corp. v. Bradhurst 100 Dev. LLC, 968 N.Y.S.2d 483 (N.Y. App. Div. 2013).

273 CAL. CIV. CODE § 5980.

274 Sierra Palms Homeowners Ass'n v. Metro Gold Line Foothill Extension Constr. Auth., 228 Cal. Rptr. 3d 568 (Cal. Ct. App. 2018).

275 *Id.*

276 One limitation of statutory conferrals is worth noting: state statutes abrogating the third prong of *Hunt* may not sufficiently abrogate the requirement in federal court. Waterfall Homeowners Ass'n v. Viega, Inc., 283 F.R.D. 571 (D. Nev. 2012). In *Waterfall Homeowners Association v. Viega*, the District Court for the District of Nevada found that, in federal court, a state statute conferring representational standing to an HOA is not sufficient to abrogate the third prong of *Hunt* in an action for damages to members' homes. *Id.* There, standing was destroyed unless the plaintiff could cure it through procedural fixes, such as assignment. *Id.*

277 *Sutton Apartments*, 968 N.Y.S.2d 483; Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., 171 Cal. Rptr. 334 (Cal. Ct. App. 1981); Heritage Vill. Owners Ass'n v. Golden Heritage Invs., Ltd., 89 P.3d 513 (Colo. App. 2004); Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC, 741 S.E.2d 613, 619 (W. Va. 2013).

278 Residential Bd. of Managers v. Union Square-14th St. Assocs., 594 N.Y.S.2d 161 (N.Y. App. Div. 1993).

and some individual injuries like fraud and nuisance.[279] However, no cases permit an association to recover more personalized interests, such as emotional distress damages, medical damages, or lost wages.[280] Ultimately, no matter how favorable statutes and courts are to associational standing for monetary relief and members' individual housing condition claims, the law makes deeply personal interests hard to vindicate.

3. The Policy Considerations that Limit Aggregation via Association

Judicial or legislative laws that preclude associations from asserting individual interests reflect greater policy concerns about representational standing that go beyond adjudicatory efficiency and practicality.[281] Statutes and decisions abrogating prudential concerns typically condition the availability of such claims on *how* personal the individual members' interests are.[282] When it comes to seeking redress for a member's injuries, the question is not how far standing *can* go in redressing individual harms, but how far *should* it go?

Standing conferrals that are too broad risk abridging tenants' individual rights.[283] Because representative actions bind represented parties, questions about autonomy and consent are central issues in such proceedings.[284] American law generally resists this type of paternalism, and thus disfavors broad grants that allow organizations to represent an individual's interest when the individual is better suited to do so.[285] If legislatures allowed tenant associations to bring individualized, personal claims, a neighbor could theoretically bundle another's emotional distress claim with the association's more generalized claims and settle the issue without that party's consent. [286] The person with an emotional distress claim could then be precluded from litigating their issue and resolving it in a manner more aligned with their

279 *Sutton Apartments*, 968 N.Y.S.2d 483; *Raven's Cove*, 171 Cal. Rptr. 334; *Heritage Vill.*, 89 P.3d 513; *Univ. Commons*, 741 S.E.2d at 619; 3944 Ky. Homeowners Ass'n v. Baked Potato, No. 21BBCV00792, 2021 Cal. Super. LEXIS 73385, at *5-6, *10 (Super. Ct. Cal. Dec. 3, 2021); *Residential Bd. of Managers*, 594 N.Y.S.2d 161.

280 *See, e.g., Sutton Apartments*, 968 N.Y.S.2d 483; *Raven's Cove*, 171 Cal. Rptr. 334; *Heritage Vill.*, 89 P.3d 513; *Univ. Commons*, 741 S.E.2d at 619; *3944 Ky. Homeowners Ass'n*, No. 21BBCV00792, 2021 Cal. Super. LEXIS 73385; *Residential Bd. of Managers*, 594 N.Y.S.2d 161.

281 Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220, 226-27 (N.C. Ct. App. 2001); *Southers*, 272 Cal. Rptr. at 367-68.

282 *See* CAL. CIV. CODE § 5980; N.Y.C. ADMIN. CODE § 27-2115; Sierra Palms Homeowners Ass'n v. Metro Gold Line Foothill Extension Constr. Auth., 228 Cal. Rptr. 3d 568 (Cal. Ct. App. 2018).

283 Heilman, *supra* note 92, at 272.

284 *Id.* at 252 n.79, 272; Roche, *supra* note 92, at 1481-82; PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010).

285 Heilman, *supra* note 92, at 272.

286 *See generally* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010) (discussing settlement and preclusion).

interests.[287] Therefore, in pushing the boundaries of associational standing doctrine to allow tenants to aggregate claims that would otherwise never be adjudicated, courts, legislatures, and attorneys must ensure that representative actions do not impinge on tenants' individual rights—which would be antithetical to the purpose of aggregating claims to protect tenants.

V. PROPOSAL: TENANT ASSOCIATIONS AS A VEHICLE FOR RIGHTS ENFORCEMENT AND COMMUNITY ORGANIZING

Tenants, lawyers, and tenants' organizers should utilize tenant associations to enforce tenants' rights by aggregating meritorious claims that tenants would not otherwise bring. In this way, across all jurisdictions, tenants can combat landlords' illegal actions and omissions and realize safer environments for entire communities. Case law, legislation, and civil procedure permit avenues that enable such aggregations now, regardless of jurisdiction.[288]

First, in jurisdictions with common law standing doctrine, associational standing can allow tenants to win injunctive relief for shared interests.[289] Some of these jurisdictions may even be amenable to upholding standing for shared damages or certain individual claims.[290] Second, tenant advocates can realize more comprehensive change by organizing around specific tenant protection legislation that removes procedural barriers to meritorious claims, such as allowing standing for a wider variety of claims and remedies.[291] Third, tenants' attorneys should use joinder and claim assignment to include individualized claims that would otherwise be excluded from associational standing cases.[292] Finally, advocates should harness the extralegal benefits of organizing that is inherent to bringing associational actions and advancing legislative change.[293]

A. Tenant Association Actions via Common Law Standing

Across all jurisdictions, the *Hunt* test and other associational standing tests provide opportunities for tenants to vindicate shared claims and interests.[294] Even where associations have been strictly precluded from

[287] *See generally id*.

[288] *See* discussion *infra* Parts V.A, V.C.

[289] *See infra* Part V.A.

[290] *See infra* Part V.A.

[291] *See infra* Part V.B.

[292] *See infra* Part V.C.

[293] *See infra* Part V.D.

[294] Snyder v. Callaghan, 284 S.E.2d 241 (W. Va. 1981); Crescent Park Tenants Ass'n v. Realty Equities Corp., 275 A.2d 433 (N.J. 1971); Tenants Ass'n of Park Santa Anita v. Southers, 272 Cal. Rptr.

seeking damages[295] or bringing individualized claims,[296] tenants can improve the safety of their environments.[297] For example, hazards, nuisances, and security issues can plague both indoor and outdoor common areas, interfering with tenants' safety and peace.[298] In these situations, pursuing an injunction as an association is an efficient way for tenants to get the attention of their landlord (or other illegal or recalcitrant actor) and resolve the issue.[299]

Where the jurisdiction or client permits,[300] tenants' attorneys should also pursue claims for shared damages or individual injuries that may be proven by common evidence. Courts may be amenable to these claims where it is prudential to adjudicate them.[301] Tenant associations could win repairs to common areas, injunctions against other nuisances or safety hazards that affect the whole building, and monetary relief that is shared or provable with common evidence.[302]

However, statutes provide the strongest basis for associational standing.[303]

B. Advocating for Tenant Protection Statutes

Tenants, lawyers, and advocates alike should petition local legislatures to adopt stronger procedural and remedial protections for tenants. Such tenant protection laws should clear tenants' paths to litigation with express conferrals of associational capacity and standing, as aggregation can help close the enforcement gap.[304] These statutes can further strengthen tenants' rights and remedies to put safe, quality homes within reach for renters.[305]

361, 367 (Cal. Ct. App. 1990); Creek Pointe Homeowner's Ass'n v. Happ, 552 S.E.2d 220 (N.C. Ct. App. 2001).

295 *Creek Pointe*, 552 S.E.2d 220; *Southers*, 272 Cal. Rptr. at 367-68.

296 MetroClub Condo. Ass'n v. 201-59 N. Eighth St. Assocs., No. 4545, 2013 Phila. Ct. Com. Pl. LEXIS 352 (Common Pleas Ct. Phila. Cnty. 2013); *Creek Pointe*, 552 S.E.2d 220.

297 *E.g.*, Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858 (N.Y. Civ. Ct. 2021) (permitting standing for a tenant association's action to redress violations of the housing code).

298 *E.g.*, *id.* at 861.

299 *Cf. id,* at 863 (discussing the efficiencies of group actions).

300 *See, e.g.*, Villa Sierra Condo. Ass'n v. Field Corp., 787 P.2d 661 (Colo. App. 1990); International Association of Firefighters, Local 1789 v. Spokane Airports, 45 P.3d 186 (Wash. 2002); *Southers*, 272 Cal. Rptr. at 361.

301 *See International Association of Firefighters, Local 1789*, 45 P.3d 186 (allowing an association to sue for its members' individual damages because the amount was "certain, easily ascertainable, and within the knowledge of the defendant").

302 *See, e.g.*, *Southers*, 272 Cal. Rptr. 361 (permitting associational standing for legal fees, statutory fines, nuisance abatement, and an injunction to prevent harassment, intimidation, and other illegal practices with regard to tenants).

303 Fischer, *supra* note 241, § II(A)(3); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(2)(b), (5)(a).

304 Sabbeth, *supra* note 3, at 144.

305 *Id.*

Tenant protection advocacy efforts should incorporate insights on associational standing from jurisprudence on CIOAs. A model statute should specifically: (1) allow capacity and standing for a tenant association to represent its members' interests on matters affecting two or more units[306] or damage to a separate interest that arises out of, or is integrally related to, damage to a common interest[307]—so long as the represented party to whom the separate interest belongs consents to representation;[308] (2) authorize an association to recover shared monetary damages, including punitive damages and attorney's fees;[309] (3) permit standing even where adjudication requires members' individual participation; and (4) permit standing for associations formed subsequent to the incident from which the suit arose.[310] Together, these recommendations would allow an association to seek prospective relief for related violations to individual apartments,[311] vindicate the common interests affected by improper care of the building,[312] recover shared monetary relief,[313] and secure attorney's fees.[314] To strengthen the statute, the legislature should include a declaration of intent: to promote tenants' abilities to enforce their rights while prioritizing their autonomy and consent.

The recommended statute intentionally precludes associations from (1) asserting unrelated, individual interests and (2) seeking individualized damages. This design prevents associations from litigating issues that a person should be able to adjudicate individually, such as claims for emotional distress, medical bills, lost rent, and damaged property. In doing so, the statute incorporates the policy concerns regarding infringement on individual rights but does not address the existing barriers tenants face in bringing these claims.[315] Ultimately, this proposal considers that the potential harm that could result from allowing a neighbor to bring and settle another's emotional

306 This provision mirrors the New York Property Law considered in *Residential Board of Managers of Zeckendorf Towers*. N.Y. REAL PROP. LAW § 339-dd; Residential Bd. of Managers v. Union Square-14th St. Assocs., 594 N.Y.S.2d 161 (N.Y. App. Div. 1993).

307 CAL. CIV. CODE § 5980.

308 *See, e.g.*, D.C. CODE § 42-3502.16a (authorizing standing provided that, among other things, one or more members have authorized the tenant organization to represent that member in the proceeding).

309 Sabbeth, *supra* note 3, at 127-28 (discussing fee-shifting as "an important market mechanism," while noting the current issues in implementation).

310 Orange Grove Terrace Owners Ass'n v. Bryant Props., 222 Cal. Rptr. 523 (Cal. Ct. App. 1986) (finding the applicable statute did not bar recovery from actions that occurred prior to a homeowners association's formation).

311 *See generally Residential Bd. of Managers*, 594 N.Y.S.2d 161 (finding that the provision in N.Y. REAL PROP. LAW § 339-dd conferred standing on the board to pursue members' fraud claims).

312 *See,e.g.*, Magzamen v. UWS Ventures III LLC, 149 N.Y.S.3d 858 (N.Y. Civ. Ct. 2021).

313 *See, e.g.*, Sutton Apartments Corp. v. Bradhurst 100 Dev. LLC, 968 N.Y.S.2d 483 (N.Y. App. Div. 2013).

314 Sabbeth, *supra* note 3, at 127-28.

315 *See supra* Part IV.B.3.

distress claim outweighs the potential harm of never litigating the claim. The goal is to bolster tenants' autonomy by providing better avenues for them to realize safe and healthy homes, redress injustice, and challenge abusive landlords—it is not to bury their priorities under those of other tenants.[316]

Tenant advocates should also demand that legislatures include provisions that ensure a strong foundation of substantive, actionable rights and remedies for tenants. These statutes should expressly provide for a private right of action to enforce the housing code, fee-shifting to help no- and low-income renters find counsel, punitive damages with specific examples of the wanton behavior that warrants them, and other policies that are integral to strengthening tenants' rights.[317]

C. Mechanisms for Asserting "Too Inherently Personal"[318] Interests

Tenants' claims that courts, legislatures, and this Note deem "too inherently personal"[319] for aggregation via associational standing may still be brought alongside associational actions utilizing mechanisms that prioritize the consent and participation of individual tenants. Though the case law does not contain an example of a statute that permits associations to litigate members' more personal claims fairly and consensually, civil procedure provides viable solutions: joinder and assignment.[320] These mechanisms enable more impactful, comprehensive tenants' actions, as litigants can combine individual claims that were not feasible for individual adjudication with larger actions by tenants' associations.

Both joinder and assignment require an individual's consent to bring and settle claims.[321] Though joinder of parties is imperfect as a *sole* aggregational mechanism,[322] this form of aggregation can *optimize* such

316 *See infra* Part V.C (addressing these considerations).

317 *See generally* Sabbeth, *supra* note 3. For examples and a discussion of additional tenants' rights policies and legislation, see HUSSEIN & GALLAGHER, *supra* note 6. Ensuring a private right of action clears tenants' paths to litigation even if their injuries are not cognizable under traditional rights of action. *See, e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 n.63 (D.C. Cir. 1970) (noting that *de minimis* housing violations do not amount to a breach of the warranty of habitability). A full review each of these protections is outside the scope of this Note.

318 *Southers*, 272 Cal. Rptr. at 367-68.

319 *Id.*

320 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010); 15 DANIEL R. COQUILLETTE, GREGORY P. JOSEPH, GEORGENE M. VAIRO & CHILTON DAVIS VARNER, MOORE'S FEDERAL PRACTICE § 101.40 (Matthew Bender ed., 3d ed. 2023); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(5)(d); Warth v. Seldin, 422 U.S. 490, 515 (1975).

321 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010); 15 COQUILLETTE, JOSEPH, VAIRO & VARNER, *supra* note 320, § 101.40(2)(c).

322 *See supra* Part IV.B.

litigation when used in conjunction with associational standing.[323] An association can use representative standing to bring a variety of claims on behalf of all tenants[324] and join tenants whose more personal claims share questions of fact or law with those asserted by the association.[325] The same plaintiff's attorney that represents the association would be able to represent joined parties, and the combined potential recovery would make the suit financially worthwhile.[326] Adding individualized claims through joinder is best suited for tenants who want to be involved in the communal negotiation, litigation, and settlement of their claims.[327]

Tenants who do not wish to be involved in ongoing litigation can also gain redress through assignment.[328] Claim assignment is an agreement that transfers the injury-in-fact of one person, the assignor, to a third party, the assignee.[329] This allows the assignee to sue for the assignor's claim.[330] Associations may thus be the assignees of members' claims that would otherwise be precluded by associational standing.[331] These agreements should specify exactly what interests a party is transferring and ensure that monetary relief is returned to the assignor.[332] Thus, utilizing both joinder and assignment in associational actions can be effective ways to prioritize individual members' consent and autonomy.

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323 *See generally* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010) (reviewing joinder as a procedural mechanism).

324 *See, e.g.*, Raven's Cove Townhomes, Inc. v. Knuppe Dev. Co., 171 Cal. Rptr. 334 (Cal. Ct. App. 1981) (upholding a homeowner association's standing to bring claims for damage to individual units where it also asserted causes of action for damages to common areas and declaratory relief).

325 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(A) (AM. L. INST. 2010).

326 Sabbeth, *supra* note 3, at 144. *See generally* PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 (b)(1)(A) (AM. L. INST. 2010).

327 PRINCIPLES OF THE L. OF AGGREGATE LITIG. § 1.02 cmt. b(1)(B) (AM. L. INST. 2010).

328 15 COQUILLETTE, JOSEPH, VAIRO & VARNER, *supra* note 320, § 101.40(2)(c); [1 pt. 3] ROHAN & RESKIN, *supra* note 184, § 42.08(5)(d); Warth v. Seldin, 422 U.S. 490, 515 (1975).

329 15 COQUILLETTE, JOSEPH, VAIRO & VARNER, *supra* note 320, § 101.40(2)(c); Bradley & Young, *supra* note 106, at 62-63 n.325.

330 15 COQUILLETTE, JOSEPH, VAIRO & VARNER, *supra* note 320, § 101.40(2)(c); Bradley & Young, *supra* note 106, at 62-63.

331 *See, e.g.*, *Warth*, 422 U.S. at 515 (noting that damages cannot be awarded because members of the association did not assign their damages claims to the association); Waterfall Homeowners Ass'n v. Viega, Inc., 283 F.R.D. 571 (D. Nev. 2012) ("Homeowners could assign their claims to an association outright, obviating the representational standing issue.").

332 15 COQUILLETTE, JOSEPH, VAIRO & VARNER, *supra* note 320, § 101.40(2)(c).

D. Other Considerations for Implementation

Implementing this proposal calls for tenants, tenant advocates, and appropriate lawyers[333] to zealously organize communities of tenants around shared issues. Though this requires strategic, time-consuming efforts beyond litigation, it also offers significant benefits that litigation alone cannot.[334]

Aggregating claims through tenant associations addresses the shortcomings of litigation.[335] Lawsuits can take too long to address urgent problems[336] and are "often insufficient to address the recurring problems of a community."[337] Progressive lawyers criticize litigation-based advocacy for "detract[ing] from critical organizing efforts and direct[ing] resources away from creating long-term solutions."[338] "[T]argeted and discrete" associational representation and litigation, however, can be effective as a "tool in an array of neighborhood empowerment strategies," such as "tenant organizing and various other efforts at grassroots mobilization."[339] Progressive lawyers that combine litigation with collective action realize transformative outcomes for their clients.[340] For example, a New York City landlord made expedited repairs that radically transformed tenants' homes after a tenant's association instituted a building-wide rent strike alongside litigation for safety violations.[341] Additionally, tenants, community lawyers, politicians, and activists have utilized tenant associations in a coordinated campaign to maintain the affordability of New York City rental housing.[342] Organizers and lawyers avoided the pitfalls of divergent interests by uniting tenants around a clear, salient mission: "prevent[ing] the eviction of tenants in the complexes, preserv[ing] the affordability of those complexes, and maintain[ing] some sense of housing stability for the tenants residing in them."[343]

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333 Notably, along with not being able to represent clients in class actions, LSC is also precluded from "educating potential clients about their rights and then offering to represent them." DILLER & SAVNER, *supra* note 96, at 4.

334 Krishnan, *supra* note 9, at 219-20, 233-34.

335 *See, e.g.*, Brescia, *supra* note 12, at 761-62; Krishnan, *supra* note 9, at 219.

336 Krishnan, *supra* note 9, at 231.

337 *Id.* at 218.

338 Brescia, *supra* note 12, at 761-62. *See also* Krishnan, *supra* note 9, at 218-19 n.5.

339 Brescia, *supra* note 12, at 761-62 ("[L]itigation [designed to preserve a narrow, quasi-established right] is consistent with efforts by progressive lawyers who seek to preserve rights rather than establish them."); Krishnan, *supra* note 9, at 219.

340 Krishnan, *supra* note 9, at 240, 242, n.29; Brescia, *supra* note 12, at 729-30, 751.

341 Krishnan, *supra* note 9, at 240.

342 Brescia, *supra* note 12, at 729-30, 752-53.

343 Brescia, *supra* note 12, at 729-30, 752-53.

Community organizing further addresses the cognitive and cultural barriers that contribute to the enforcement gap.[344] Organizing tenant associations can connect tenants with community members and resources that offer extralegal solutions to their problems, which scholars emphasize may be preferable or better suited for poor and minority communities.[345] Additionally, engaging all of the tenants in a building could lead to more widespread mobilization across communities and municipalities. These movements would form the foundation of the lobbying and advocacy efforts necessary to pass stronger tenant protections.

Ultimately, pursuing impactful litigation via tenant association representation can encourage dynamic, community-responsive lawyering and galvanize larger communities of tenant advocates.[346]

VI. CONCLUSION

Associational standing doctrine can be utilized to address many of the current issues undermining tenants' rights. This Note seeks to summarize jurisdictional differences and delineate relevant federal and state considerations where they arise.[347] Common law doctrine provides opportunities for redress of common grievances, stronger tenant protection statutes can facilitate enforcement of some individual interests, and procedural mechanisms can optimize the use of litigation to prevent low-value claims from slipping through the cracks. Together, tenants and advocates can harness the power of tenant associations to close the enforcement gap, unite communities, develop community leadership, and realize safe, quality housing for tenants across the United States.

344 Greene, *supra* note 71, at 1317.

345 *Id.* at 1314; Young & Billings, *supra* note 25, at 492.

346 Krishnan, *supra* note 9, at 233-34; Brescia, *supra* note 12, at 755-56.

347 A limitation of this research is that it does not provide a fully exhaustive review of each state's laws.